IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

NO. 487161

ON APPEAL FROM THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR CLARK COUNTY

Case No. 15-2-02794-1

ALICE LOPEZ, an unmarried woman,

Appellant,

vs.

JPMORGAN CHASE & CO., a New York Company; JPMORGAN CHASE BANK, NA, an Illinois National Association; DEUTSCHE BANK NATIONAL TRUST CO., a California Company; NORTHWEST TRUSTEE SERVICES, INC., a Washington Corporation; and JOHN DOES 1-10,

Respondents.

ON APPEAL FROM THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR THE COUNTY OF CLARK

APPELLANT LOPEZ'S REPLY BRIEF

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

RCW CHAPTER 61.24

RCW CHAPTER 62A

OTHER AUTHORITIES

I ARGUMENT

A. Enforceability of Note Irrelevant to Issues in Case.

Defendants/Respondents JP Morgan Chase Bank, NA ("Respondent 1") and Deutsche Bank National Trust Company as Trustee ("Respondent 2") (collectively "Respondents 1") invest the better part of five pages of their 16-page brief extolling the virtues of the Washington Supreme Court's holding in *Brown v. Dept. of Commerce*, 184 Wn.2d 509 (2015). The investment is wasted because, with all due respect to the Washington Supreme Court, the deed of trust ("DOT") does not follow—and historically has never followed--a transfer of the *naked* right to enforce a note. As is demonstrated below, the DOT follows a transfer of the right to enforce the note *only if* the transfer of the right to enforce is incident to the transfer of *ownership* of the note.

B. Mortgage Loan Explained.

In *every* mortgage[1] loan transaction, when the transaction closes, the Lender acquires four interests: (1) ownership of the underlying debt obligation that is created by the borrower's acceptance of the loan; (2) ownership of the mortgage note that the borrower gives in payment of the underlying debt obligation[2]; (3) holder-ship of the note (in every case, the

[1] Throughout this Reply, the word "mortgage" includes deed of trust.

[2] This interest is incontrovertible proof that the mortgage note and underlying debt obligation are not the same thing. RCW 62A.3-310(b) indicates that instruments—including mortgage notes--are taken for obligations. RCW 62A.3-310(b) would not, indeed could not, exist if a mortgage note and the underlying debt obligation were the same thing. It is this failure, by lawyers and, frankly, the courts, to understand that the note and underlying debt obligation for which the note is taken as payment are two

Lender is given possession of the note, and the note, in every case, specifically names the Lender. Therefore, under RCW 62A.1-201(b)(21)(A), the Lender becomes the note holder.); and (4) pursuant to RCW 62A.3-301, the right to enforce the note (the PETE).

Accordingly, at the close of *every* mortgage loan transaction, the Lender is the *owner* of the note; the *owner* of the underlying mortgage debt obligation for which the note is taken as payment; the *holder* of the note; and the PETE. These four interests are passed to the Lender at the close of every standard mortgage loan transaction.

In Washington, as in every other state in the union, the DOT secures repayment of the debt to the Lender, the Lender's successor, or the Lender's assign. The terms "successor" and "assign" are never defined in a DOT. When material contract terms are undefined in the contract, Washington courts looks to dictionary definitions to determine the ordinary meaning of the undefined term or terms. *One Pac. Towers Homeowners' Association v. Hal Real Estate Investments,* 148 Wn.2d 319, 327, 61 P.3d 1094, 1098 (2002).

1. Respondents 1 are not "Lender" under Appellant's DOT.

Black's Law Dictionary defines the Lender as "He from whom a thing or money is borrowed." *Black Law Dictionary* (5th ed. 1979) 812.

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different things that is substantially responsible for the clearly erroneous notion that the security follows a naked transfer of the right to enforce a note.

Neither Respondent 1 nor Respondent 2 *has claimed* it gave value for the loan. More importantly, neither Respondent 1 or Respondent 2 *has proven*, or even attempted to prove, it gave value for the loan.

There is no proof in the record before this court that Respondent 1 or Respondent 2 has loaned any money to (i.e., purchased the note from) anyone. Hence, there is no proof in the record that either Respondent 1 or Respondent 2 is a "Lender" as that term is defined in Appellant's DOT.

2. Neither Respondent 1 nor 2 is a "Successor" under Appellant's DOT.

In *Call v. Thunderbird Mortgage Co.,* 58 Cal. 2d 542, 375 P.2d 169, 25 Cal. Rptr. 265 (1962), the California Supreme Court defined a "successor in interest" as one who has acquired <u>all</u> of a person's interest in a property. *Call,* 58 Cal. 2d at 550. In *Fidelity Mutual Savings Bank v. Mark,* 112 Wn.2d 47, 52. 767 P.2d 1382, 1385 (1989) the Washington Supreme Court agreed with this definition. *Fidelity,* 112 Wn.2d at 52, 767 P.2d at 1385.

Washington courts have long held that a "successor" is a person who succeeds to <u>all</u> of a predecessor's interests in a property. *Puget Sound Machine Depot v. Clapp,* 191 Wash. 410, 412, 71 P.2d 174, 176 (1937); *Green v. Community Club*, 137 Wn. App. 665, 682-683, 151 P.3d 1038, 1046-1047 (2007) ("The Edlemans first contend that, by the terms of the covenants, the authority to enforce the covenants was vested exclusively in the neighborhood developer and could not, therefore, be passed to subsequent <u>*owners of the developer's interests. We disagree*</u>."); *Walker v.*

Quality Loan Serv. Corp. of Wash., 176 Wn. App. 294, 305 ("the successor trustee shall be vested with <u>*all powers*</u> of an original trustee.") (emphasis added). More than 2000 additional Washington cases hold to the same effect.

Neither Respondent 1 nor Respondent 2 has alleged, or made any effort to prove, it succeeded to *all* of the interests in Appellant's loan that its predecessor in interest(s) maintained. Indeed, Respondents 1 have vigorously denied the need to allege and prove anything other than that they *hold* Appellant's Note.

Neither Respondent 1 or 2 has proven it is a successor to the original Lender.

3. Neither Respondent 1 or 2 is an "Assign" under Appellant's DOT.

An "assignee" steps into the shoes of the assignor and acquires the assignor's *entire interest* in the subject property. *Estate of K.O. Jordan v. Hartford Accident & Indemnity Co., 120* Wn.2d 490, 495, 844 P.2d 403, 407 (1993). More than 2000 Washington cases, going back more than a century, hold to the same effect. *Stanton v. Gilpin,* 38 Wash. 191, 80 P. 290 (1905).

Neither Respondent 1 nor Respondent 2 has alleged that it was assigned *all* of the interests in Appellant's loan that. Indeed, Respondents 1 have vigorously denied the need to allege anything other than that they *hold* Appellant's Note.

Neither Respondent 1 nor Respondent 2 has proven, or even attempted to prove, it is an assignee of the original Lender's *entire* interest, or, for that matter, *any* of the original Lender's interests.

C. Respondents 1 have not proven, or attempted to prove, they are secured by DOT.

The "TRANSFER OF RIGHTS IN THE PROPERTY" Section of Appellant's DOT states clearly who and what the DOT secures:

> This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower does hereby mortgage, grant and convey to MERS (solely as nominee for Lender and Lender's successors and assigns) and to the successors and assigns of MERS, with power of sale, the following described property . . .

The DOT secures to the Lender, the Lender's successors, and the Lender's assigns (i) repayment of the loan (ii) according to the covenants and agreements in the DOT and the Note. The term "loan" is defined in the DOT: "Loan means the *debt* evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note, and all sums due under this Security Instrument, plus interest." In other words, the DOT secures to Lender, the Lender's successors, and the Lender's assigns repayment of the underlying mortgage debt for which the Note was accepted as payment.

Appellant has already demonstrated that neither Respondent 1 nor Respondent 2 has proven, or even attempted to prove, it is the Lender, the Lender's successor or the Lender's assign. This fact standing alone is

sufficient to remove Respondents 1 from the protection of the DOT. But there is much more evidence that neither Respondent 1 nor Respondent 2 is the beneficiary.

It is undisputed that Respondents 1, *at best*, claimed to have acquired only two of the four interests the original Lender obtained upon closing Plaintiff's loan: (1) designation, under RCW 62A.1-201(b)(21), as *holder* of the mortgage note; and (2) designation, under RCW 62A.3-301, as the PETE.

Respondents 1 did not claim or prove that they, or either of them, acquired *ownership* of the underlying mortgage debt obligation or *ownership* of the mortgage note Plaintiff executed in payment of that obligation. Since the Lender, at the close of the mortgage loan transaction, in addition to becoming the holder of the note and the PETE, *always* becomes the *owner* of the underlying mortgage debt and of the note that is given in payment of that debt, the failure to allege and prove ownership of the underlying debt and of the note was fatal to Respondents 1s' claims to entitlement to foreclose.

Under the terms of the DOT, the private contractual agreement between the Borrower and the Lender, the only persons who have the right to demand that the trustee invoke the "power of sale" clause in the DOT are the Lender, the Lender's successor, or the Lender's assign.[3] At the

[3] The central purpose of the DOT is to ensure that the Lender (the beneficiary of the DOT) is repaid. If the beneficiary provision in the DOT conflicts irreconcilably with the beneficiary definition in the DTA, the rule in Washington is that the beneficiary definition in the DOT must be removed from the DOT and the remaining provisions of the DOT should be enforced, if it is possible to do so. It is not possible to do so with a

close of the loan transaction under consideration in this case, the Lender acquired the four interests described above.

Neither Respondent 1 nor Respondent 2 ever claimed to own the note or the underlying debt obligation for which the Note was taken as payment, let alone proved they owned the Note or underlying debt. Under the terms of the DOT, the failure to prove ownership of either interest was fatal. Thus, neither Respondent 1 nor Respondent 2 had any right to demand that Northwest Trustee Services, Inc. ("Respondent 3") invoke the power of sale clause in the DOT, and Respondent 3 had no right to entertain and act on any such demand.

The analysis is fully supported by Washington statutes.

D. RCW 62A.9A-203 Prevented Respondents 1 from Foreclosing.

Respondents 1 and Respondent 3 assert the holder of the note need not be the owner of the note, and then Respondents 1 invest five pages of their brief in explaining that the holder of a note is entitled to enforce the note (RCW 62A.3-301). This is one of the most basic, easy-to-understand UCC concepts. As such, it is a concept that is often expounded upon a great length by those who actually understand very little about the UCC. Another very basic and very well-known Article 3 concept is that a change in ownership of a note (and, of necessity, of the underlying mortgage debt for the which the note is taken as payment) does not necessarily change

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standard DOT. The Lender, as defined in the DOT, is central to the DOT contract. Ensuring repayment of the loan to the person or entity that loaned the money permeates the contract. As such, if the need to repay the person who loaned the money is removed from the contract, the entire agreement must be cut down. *Alexander v. Anthony Int'l, L.P.*, 341 F.3d 256, 271 (2003).

the identity of the person entitled to enforce the note. What is not so well known, however, is that the UCC allows ownership of a note to change without changing the identity of the person entitled to enforce the note because the rules that determine who is entitled to enforce a note and the rules that determine whether the note, or an interest in the note, has been effectively transferred serve different functions.

The rules that determine who is entitled to enforce the note are there primarily for the benefit of the *maker of the note,* not for the benefit of the person entitled to enforce the note. *See* Report of the Permanent Editorial Board for the UCC, *Application of the Uniform Commercial Code to Selected Issues Related to Mortgage Notes* (November 14, 2011), at 8. The rules concerning ownership of a note, on the other hand, relate to who, among competing parties, is entitled to the economic value of the note. *Id.*

It is well known that Article 9 governs transactions in which property, real or personal, is used as collateral to secure an obligation. *RCW 62A.9-109(a)(1).* It is much less well known that Article 9 governs *the sale* of secured mortgage notes. *RCW 62A.9A-109(a)(3).* In other words, the same Article 9 rules that apply to transactions in which a mortgage note is used as security for a different obligation also apply to transactions in which a mortgage note is *sold.*

Rather than establish two parallel sets of rules, Article 9 uses the same terminology to describe transactions in which mortgage notes are

used as collateral for an obligation and transactions in which mortgage notes are *sold.* This dual meaning is accomplished primarily by defining the term "security interest" to include not only an interest in property that secures an obligation, but also any interest of the buyer of a promissory note in transaction that is governed by Article 9A. *(RCW 62A.1-201[b][35]).*

Similarly, the UCC's definitional conventions denominate the seller of a mortgage note as the "debtor (RCW 62A.9A-102[a])," the buyer as the "secured party (RCW 62A.9A-102(a)(72)(D)," and the mortgage note that is sold as the "collateral (RCW 62A.9A-102(a)(12)(B)." Hence, for purposes of Article 9, the buyer of a mortgage note is a "secured party" that has obtained a "security interest" in the note from a "debtor," and the same rules that apply to security interests that secure an obligation generally apply to transactions in which a mortgage note is *sold.*

With the background provided in this section, the analysis of RCW 62A.9-203 provided immediately below, and the importance of that analysis to the determination of whether Respondents 1 had the right to foreclose, should be easier to understand.

1. Analysis of RCW 62A.9A-203.

RCW 62A.9A-203(a) states a *security* interest (*ownership* interest (*See* RCW 62A.1-201[b][35]) attaches to collateral (a mortgage note (RCW 62A.9A-102[a][12][B]) when the ownership interest in the mortgage note becomes enforceable against the debtor (the *seller* of the

mortgage note (RCW 62A.9A-102[a][28][B]). Further, RCW 62A.9A-203(b) states that a *security* interest (*ownership* interest (*See* RCW 62A.1-201[b][35]) in collateral (a mortgage note (RCW 62A.9A-102[a][12][B]) becomes *enforceable* against the world the instant three conditions have been met: (1) "*value*" has been given for the note (RCW 62A.9A-203[b][1]);[4] (2) the *seller* has rights in the note or the power to transfer rights in the note to a purchaser (RCW 62A.9A-203[b][2]); and (3) either (a) the *debtor* (the *seller* of the note (RCW 62A.9A-102[a][28][B]) has signed a *security agreement* (a *security agreement* is an agreement that creates or provides for a *security interest* [(RCW 62A.9A-102[a][74] [since, under the UCC, an *ownership interest* is a *security interest*, a *bill of sale* is a *security agreement*]) that provides a description of the note (RCW 62A.9A-203[b][3][A]), or (b) the note is not a certificated security and, pursuant to the terms of the *seller's* security agreement (the bill of sale), is being held by someone other than the *secured party* (the *purchaser* of the note (RCW 62A.9A-102[a][73][D]) under RCW 62A.9A-313 solely for the purchaser's benefit (RCW 62A.9A-203[b][3][B]). *See RCW 62A.9A-203(b)(3)(A) and (B) and RCW 62A.9A-313.*

[4] Pursuant to RCW 62A.1-204(1), giving "value" for rights includes not only acquiring the rights for consideration but also acquiring them in return for a binding commitment to extend credit, as security for or in complete or partial satisfaction of a preexisting claim, or by accepting delivery of them under a preexisting contract for their purchase. In the case before this court Respondents 1 did not allege that they acquired the rights for consideration; acquired the rights in return for a binding commitment to extend credit; or acquired the rights for or in complete or partial satisfaction of a preexisting claim. In other words, Respondents 1 have neither asserted nor proven that they gave value for Appellant's mortgage note, whether they actually gave value or not. Thus, they have not proven that an enforceable "ownership" interest in Appellant's note has attached to the note. This fact is undisputed.

RCW 62A.9A-203(g) is the codification of the common law "security follows the note" doctrine. *See Official Comment 9 to UCC §9-203.* Under 9A-203(g), the DOT is automatically transferred if, *and only if*, the Note is transferred pursuant to 9A-203(a) and (b). That is, the DOT follows a transfer of *ownership* of the Note. Contrary to popular belief, and Washington court decisions, the DOT does not follow the transfer of the *right to enforce the note*, *unless* the transfer of the right to enforce the note is incident to the simultaneous transfer of *ownership of the note.*

It should be obvious that the DOT always follows a *sale* of the mortgage debt obligation for which the note is taken as payment because the DOT ensures *repayment* of the mortgage debt. The word *repayment* cannot possibly refer to the note. Why?

At the close of the mortgage loan transaction, the borrower receives the amount loaned. That is, the amount loaned is turned over to the home seller in the borrower's name. Far from being the obligation that must be repaid, the note is in fact the mutually agreed upon method of repaying the mortgage debt. The mortgage note is *not received by the borrower* at the close of the mortgage loan transaction; the mortgage note is *given by borrower* to the Lender at the close of the transaction in payment of the mortgage debt. *See RCW 62A.3-310(b)(2).* The mortgage note is *never repaid.* It is *paid to repay* the mortgage debt.

The right to sell the property to obtain *re*payment of the *mortgage debt obligation,* not to obtain payment of the note,[5] is the "*benefit*" the DOT confers on the *owner* of the mortgage debt--the Lender, the Lender's successor, or the Lender's assign. Consequently, unless the holder of the note is the owner of the note it holds, the holder of the note is never the Lender, the Lender's Successor, or the Lender's Assign. This is true because, at the close of a mortgage loan transaction, the Lender is always the owner of the mortgage debt obligation and the owner of the mortgage note that is given in payment of that obligation.

A successor or assign by definition always acquires *all* of its predecessor's interest in the property. Consequently, unless the holder of the note is the owner of the note it holds, the holder of the note can never be the *beneficiary* of the DOT because it never acquires the Lender's ownership of the note or of the mortgage debt obligation.

b. Defendants Mantra that the PETE the DOT need only be the holder of the Note is incorrect and not applicable to this case.

Respondents will say so what. The *Brown* Court has conclusively decided the holder of the note is entitled to foreclose in Washington, and this court is bound by the *Brown* Court's decision. Respondents are as wrong about that claim as they are about the claim that the holder of the note, regardless of note ownership, is entitled to foreclose.

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[5] The note is never repaid because the note *is the instrument that repays the mortgage debt.* Everyone forgets that it is the mortgage debt, not the note, that must be repaid to the Lender. The note is merely the agreed upon method of paying the mortgage debt. *See RCW 62A.3-310(b)(2).* The failure of many Washington courts to understand this subtle UCC concept is the source of much of the confusion that exists in the case law.

In addition, as a originator of the Note, the Borrower has standing to challenge if the transfer of the Note was legal. Lopez challenged that the Note was legally transferred into the Trust because it was transferred years after the trust closed, a violation of the Pooling & Servicing Agreement (PSA). Further, Lopez challenged the Note was legally transferred since MERS purports to be a legal beneficiary, which it is note, See *Bain, supra.* Hence the transfer of the note was illegal. As such, the PETE the Note cannot enforce the Deed of Trust securing the Note. RCW 62A.9A-310. provides that an illegal holder of the Note can enforce the Note. Further, Lopez argued in court that she is an ***intended*** Third Party Beneficiary of the PSA. The provisions of the PSA plainly state that only the PSA named Depositor can transfer the Note and DOT. MERS is not a named Depositor nor are any of the Defendants. The PSA is governed by New York law by its terms. New York Restatement of Contracts Law, *Greenfield, et al v. Philies Records, Inc* et al, 81 NY 2d 462, 720 NE 2D 166 (2002)provides that the plain unambiguous language of the contract controls. Thus, Common Law of New York applies. It is not necessary to rely on 26 U.S.C. 860 *et. seq.* violations for standing to challenge the transfer of the Note to the trust, although they are appropriate to rely as well on since Lopez is an intended third party beneficiary of the PSA. The unambiguous language of the PSA contract, without reference to invoking any right of the investor party to the PSA is that the Seller of the Note to the Trust has an obligation to maintain the highest value of the Trust notes

in good faith attempting to modify the Note to achieve the highest value if the borrower defaults without refinancing. The trial court failed to determine if any of the requirements of the PSA occurred because the trial court denied Lopez had any standing to challenge any non-compliance with the PSA. Further, RCW 40.16.130 prohibits the recording of any false or deceptive documents. The Assignment of the deed of Trust and the Appointment of Successor Trustees are recorded documents that are false in that they falsely state that MERS was the owner and holder of the Note and DOT and thereby entitled to transfer them. That was false and violation of Washington law, regardless of the arguments that New York law applies tp interpreting the PSA. Lopez also asserts that Washington common law also provides hat the plain unambiguous language of the PSA intends to establish Lopez as a third party beneficiary, as well as that as originator and grantor of the note she has standing to challenge if any transfer of the note as contemplated by the terms of the note, was a legal and not a legal transfer. Notwithstanding the provisions of the Washington Uniform Commercial Code that allow for an illegal holder to foreclose the Note, Lopez argues the terms of the note supersede that provision of the Washington UCC sine the parties ot a contract can contract outside the UCC with defining their own terms in the contract. That is what is a fact in this case.

Further, *Brown* not only violates the Washington Constitution as discussed below, bu*t Brown* is distinguishable on the facts from this case.

Brown found that the Declaration of Beneficiary was not disputed by *Brown* that was relied on by M&T Bank to be the holder and therefore owner for purposes of the deed of Trust Act, ignoring that the Owner was Freddie Mac. Here, Lopez disputed that Declaration and aso argued it was irrelevant since the Owner of the Note was known on the face of the documentation to be Freddie Mac. Brown, also found that there was considseration for the transfer to M&T referring to the requirement that the transfer was conditioned on M&T making a good faith effort to modify the loan of Brown. The court found that there was no determination of wheteher or not M&T complied with that condition nor was it challenged.

Lopez specifically challenged application of Brown for the above reasons arguing Lopez disputed the Declaration of Beneficiary or that it could be invoked under the DOT to substitute for the Owner being the PETE and further disputed and continues to dispute that there was any good faith modification effort by Defendants to modify her loan in accordance with the Freddie Mac federal guidelines.

Brown is distinguishable on the facts and law to this case and is therefore Defendants cannot apply mantra-like that the PETE for the DOT is the holder of the note.

2. *Brown* violates the Washington Constitution.

Under Article II, § 1 of the Washington Constitution, within constitutional limits, the Washington Legislature has *plenary* authority to enact the laws of the State of Washington. *Dot Foods, Inc. v. Dept. of*

Revenue, 185 Wn.2d 239, 249-250 (2016); *Derby Club v. Becket,* 41 Wn.2d 869, 873 (1953). Any action by the judiciary that "unduly burdens" enactments of the legislature in an area of the legislature's responsibility and authority is unconstitutional. *Griffiths v. State,* 28 Wn.2d 493, 500 (1947). Hence, if RCW 62A.9A-203 requires a lawful transfer of *ownership* of a secured note to transfer the right to enforce the DOT that secures the note, and *Brown* holds that the *holder* of a secured note, regardless of ownership, is authorized to foreclose, *Brown* must be overturned.

Plaintiff has already demonstrated that RCW 62A.9A-203(a), (b), and (g), like the DOT itself, mandates a transfer of *ownership* of a secured note for the transferee to obtain the right to enforce the DOT that secures the note. *Brown* holds that the holder of a secured mortgage note, regardless of ownership of the note, is entitled to foreclose. Hence, *Brown* stands in direct, unavoidable conflict with RCW 62A.9A-203, a constitutionally enacted statute, and the DOT. Accordingly, to comply with Article II, Section 1 of the Washington Constitution, *Brown* must be overturned. Because the Washington Constitution is the supreme law of this state, this court has constitutional authority to ignore *Brown* and decide the case as RCW 62A.9A-203 requires.

E. RCW 61.24.030(7) prevented Trustee from Recording Notice of Trustee's Sale.

RCW 61.24.030(7)(a) requires the trustee to have *proof* the person claiming to be the beneficiary, is the *owner* of the Note before the trustee

is authorized to record, transmit or serve a notice of trustee's sale. RCW 61.24.030(7)(a) also states that a declaration from the beneficiary, made under penalty of perjury, that the beneficiary is the actual holder of the note is sufficient "*proof* as required under this subsection. The "This subsection" reference is a reference to subsection 7. Subsection 7 has three subparts—subparts (a), (b), and (c). The only *proof* requirement contained in any one of those three subparts (subpart [a], [b], or [c]) is *proof* the person claiming to be the beneficiary is the *owner* of the note. In other words, the reference to "*proof* as required under this subsection" contained in the second sentence of 61.24.030(7)(a) is a reference back to the "*proof* of ownership of the note" requirement contained in the first sentence of 61.24.030(7)(a). This interpretation of the connection between the two sentences of RCW 61.24.030(7)(a) is the only grammatically correct interpretation; it has the added advantage of harmonizing the two sentences of (7)(a)--something the *Brown* Court claimed could not be done.

Courts are required to harmonize the provisions of a statute if it is possible to do so. Additionally, an interpretation of a statute that gives meaning to each provision in the statute is preferred to an interpretation which renders portions of the statute superfluous. *State v. Small,* 99 Wn.2d 755, 765, 665 P.2d 384, 390 (1983); *C.J.C. v. Corp. of Catholic Bishop of Yakima,* 138 Wn.2d 699, 708, 985 P.2d 262 (1999). A statute which is clear on its face is not subject to judicial interpretation. *State ex rel. Royal*

v. Board of Yakima County Commissioners, 123 Wn.2d 451, 462, 869 P.2d 56, 62 (1994). By interpreting RCW 61.24.030(7)(a), a statutory provision that is clear on its face, the Supreme Court violated these two venerable, time-honored legal principles.

RCW 61.24.030(7)(a) is clear on its face. That provision—considered in conjunction, not competition, with RCW 61.24.005(2)--requires the person claiming to be the *beneficiary* to be the *holder and owner* of the underlying mortgage debt obligation and of the note that is taken in payment of that obligation. Those have been the requirements for enforcement of a mortgage for centuries. The idea that the right to enforce a DOT is automatically transferred as part of a transfer of the right to enforce the note the DOT secures is a perversion of the centuries old security follows the note doctrine.

Respondents did not allege or prove that they are the owners of Plaintiff's Note. Respondents therefore are not entitled to foreclose.

IV CONCLUSION

Each Respondent's participation in the preparation, execution and implementation of the numerous false documents that have been prepared and executed in this case violated the DTA. Respondents actions have also violated the DOT, RCW 62A.9A-203(a), (b), and (g) (the "security follows the note" doctrine) and RCW 62A.3-310.

There are clearly issues of material fact that remain to be decided in this case.

For the reasons recited herein above, this Court should reverse the trial court's ruling on summary judgment and remand this case to the trial court with instructions to reinstate the case.

Respectfully submitted,

/s/James A. Wexler
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CERTIFICATE OF SERVICE

I certify that on the November 8, 2016, I caused a true and correct copy of (1) Reply to Respondents' Brief, (2) Motion to Extend Time for filing Reply Brief and (3) this Certificate of Service to be filed with:

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